

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

GENE GALES	§	PLAINTIFF
	§	
v.	§	CIVIL ACTION NO. 1:07CV485-LG-JMR
	§	
MIKE FARMER, et al.	§	DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATIONS

This cause comes before the Court on the Report and Recommendation [45] of Chief United States Magistrate Judge John M. Roper entered in this cause on August 24, 2007, concerning Plaintiff's Motions for Default [11-1] and [39-1]. Plaintiff filed a Response on September 6, 2007.

In his Motions for Default, Plaintiff asserts that he did not receive a copy of Defendants' Answers to his Complaint and his Amended Complaint. Plaintiff's original Complaint was filed on March 22, 2007, and was served on all Defendants on June 20, 2007 [28-1; 29-1; 30-1; 31-1]. Plaintiff filed a Motion to Amend his Complaint on June 20, 2007. Defendants sought and obtained an extension of time in which to answer the original Complaint, and timely filed an joint Answer to both Complaints on July 3, 2007. Defendants also filed an Amended Answer to both Complaints on July 9, 2007. The Court subsequently granted Plaintiff's Motion to Amend the Complaint, upon seeing that Defendants did not object to the filing of an Amended Complaint, and had previously answered the Amended Complaint.

In his Response, Plaintiff reiterates his argument that he has not received a copy of Defendants' Answers, and he also asserts that the docket does not reflect that Defendants filed Answers to his Complaint and Amended Complaint. However, Defendants have in fact answered both Complaints filed by Plaintiff, and have demonstrated that they served copies of

the Answers on Plaintiff on three occasions out of an abundance of caution. Additionally, the copy of the docket attached to Plaintiff's Response reflects that Defendants filed an Answer to both Complaints on July 3, 2007, which was assigned document number [20], and an Amended Answer to both Complaints on July 9, 2007, which was assigned document number [24].

The Court finds that the Magistrate Judge properly recommended that Plaintiff's Motion for Default be denied, since Plaintiff has not demonstrated that Defendants have "failed to plead or otherwise defend." *See* FED. R. CIV. P. 55. After referral of hearing by this Court, no objections having been filed as to the Report and Recommendation, and the Court, having fully reviewed the same as well as the record in this matter, and being duly advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [45] of Chief United States Magistrate Judge John M. Roper entered on August 24, 2007, be, and the same hereby is, adopted as the finding of this Court. Plaintiff's Motions for Default [11-1] and [39-1] are hereby **DENIED**.

SO ORDERED AND ADJUDGED this the 14th day of September, 2007.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE